IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
November 5, 2008 Session

ALAN P. WOODRUFF v. NATIONAL LIFE INSURANCE COMPANY

Appeal from the Circuit Court for Sevier County
No. 2006-181-II Richard R. Vance, Judge

No. E2008-00605-COA-R3-CV - FILED MARCH 26, 2009

Alan P. Woodruff ("the plaintiff")[1] filed suit against National Life Insurance Company seeking the return of premiums paid by Daniel Edgar, the named insured on two life insurance policies issued by National. The suit was filed following the conclusion of underlying litigation in the state of Florida, in which Edgar and his former employer, Cape Coral Medical Center ("the hospital"), both claimed exclusive ownership of the subject policies. During the pendency of the Florida litigation, National advised counsel for the parties that the policies had lapsed due to non-payment of premiums; but that the company was willing to reinstate the policies, provided a payment was made in an amount sufficient to keep the policies current through July 1995. National "suggest[ed]," if the competing parties could not agree on who would pay the past due premiums, that each of them pay the full amount of the delinquent premiums with the understanding that National would return to the unsuccessful party in the Florida litigation the premiums paid by him or it, plus interest. Edgar made a payment of premiums in the amount of $9,065.45. Later, the Florida court ruled that the hospital owned the policies. Thereafter, Edgar assigned to the plaintiff his claim against National for return of his payment to National. As the assignee-in-interest, the plaintiff instituted this action when National failed to respond to his demand for the return of the premiums paid by Edgar. Based on the filings in the record, the trial court entered summary judgment in favor of the plaintiff and ordered the return of the premiums paid by Edgar plus interest. National appeals, arguing that there was no contract between it and Edgar that required the return of the premiums. We vacate the grant of summary judgment to the plaintiff and remand for further proceedings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Vacated; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

Dan D. Rhea, Knoxville, Tennessee, for the appellant, National Life Insurance Company.

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[1] The plaintiff is the attorney who represented Daniel Edgar in the underlying litigation. The plaintiff is representing himself in this case.

Alan P. Woodruff, Albuquerque, New Mexico, appellee, *pro se*.

OPINION

I.

This action has its genesis in an August 19, 1994, letter sent by National to counsel for the parties in the underlying Florida litigation regarding the status of certain life insurance policies. With regard to the two policies on Edgar's life having past-due premiums due, the letter states, in relevant part, as follows:

> Because these payment[s] have not been made, these policies have lapsed in accordance with their terms. In order to avoid any possible argument that any party has been prejudiced, National Life will agree to reinstate these policies if payments necessary to keep them current through July 1995 are made on or before September 20, 1994. This offer will be automatically withdrawn in the event of death before the payment is made.
>
> *If an agreement cannot be reached between Mr. Edgar and the Hospital as to who should pay these amounts, we suggest that both parties pay them and National Life will refund the payment made, plus interest at the rate of 5%, to the party who is ultimately determined not to be the owner of the Edgar Policies.*

(Emphasis added.)

On September 18, 1994, Edgar made the requested payment of $9,065.45 to reinstate the policies. By affidavit filed in support of the plaintiff's motion for summary judgment, Edgar stated that he made the necessary payment in reliance on the August 19 letter and, hence, that he did so with the understanding that the letter constituted a promise to refund his monies "without regard to whether or not any other party also paid, or did not pay, any portion of the premium owed" if the Florida court determined that he was not the owner of the policies. After the Florida court in December 2005 ruled adversely to Edgar, he assigned his right, title, and interest in any claim against National to the plaintiff in satisfaction of legal fees he had incurred. The record contains no evidence of either a response by National to the plaintiff's demand for a refund or whether the hospital had also accepted National's offer to paid the past-due premiums.

The plaintiff filed suit in March 2006. In his complaint, he claimed that, pursuant to the terms of the August 19 letter, he was entitled to a return of the premiums paid, plus interest. In October 2007, the plaintiff moved for summary judgment. In its responsive statement of undisputed facts, National denied the existence of a contract and any obligation to refund the payment made by

Edgar. The parties agreed that disposition by summary judgment was appropriate.[2] In siding with the plaintiff, the trial court found, in relevant part, as follows:

> [National], by an August 19, 1994 letter of its Florida counsel in a Florida interpleader action did promise [Edgar] that if [Edgar] would pay certain premiums owed on certain insurance policies issued by [National] covering [Edgar's] life, and that if the Florida court hearing the interpleader action ultimately determined that those insurance policies did not belong to [Edgar], then [National] would refund the premiums so paid . . . ; and the court further found that said promise was not dependent upon the actions of the "hospital" party to the interpleader action; and that [Edgar] did pay premiums in the amount of $9,065.45 pursuant to the August 19, 1994 letter; and the court further found that the Florida court did adjudicate that [Edgar] was not the owner of the life insurance policies; and the court further found that the promise in the August 19, 1994 letter carried an interest rate obligation of 5 per cent simple interest per year . . . .

In summary, the trial court held, as a matter of law, that National was bound by its promise in the August 19 letter to pay to the plaintiff, as Edgar's assignee-in-interest, the amount of the premiums paid plus interest for a total recovery of $15,146.75 plus court costs.

At this juncture, we note that although the trial court concluded that National was obligated under its offer to refund the payment made by Edgar, it did not specifically characterize the theory pursuant to which this conclusion was based. Nevertheless, it is apparent that the trial court's ruling and the plaintiff's claim are contract-based. We cannot agree with the plaintiff's argument that the issue of whether a contract existed between the parties was never directly raised in the trial court. As the plaintiff concedes, National, in its answer to the plaintiff's Tenn. R. Civ. P. 56.03 statement of undisputed facts, asserted that the August 19 letter was "not a contract." We also disagree with the plaintiff's contention that National in its brief on appeal has failed to support its claim with relevant argument. We now turn to the merits of the appeal.

II.

National generally argues that the trial court erred in granting summary judgment to the plaintiff. More specifically, National presents a single issue for our consideration:

> Did the trial court err in its determination that the plaintiff is entitled to a refund of the premium payments made pursuant to the offer set forth in the August 19 letter without a showing that both offerees made the contemplated payments?

[2] As will be shown later in this opinion, we do not agree with the parties' conclusion.

III.

The purpose of summary judgment is to resolve controlling issues of law rather than to find facts or resolve disputed issues of fact. ***Bellamy v. Fed. Express Corp***., 749 S.W.2d 31, 33 (Tenn. 1988). Summary judgment is appropriate only when the moving party demonstrates that there are no genuine issues of material fact and that he or she is entitled to judgment as a matter of law. *See* Tenn. R. Civ. P. 56.04; ***Penley v. Honda Motor Co.***, 31 S.W.3d 181, 183 (Tenn. 2000); ***Byrd v. Hall***, 847 S.W.2d 208, 210 (Tenn. 1993). In reviewing the record, "courts must view the evidence in the light most favorable to the nonmoving party and must also draw all reasonable inferences in the nonmoving party's favor." ***Staples v. CBL & Assocs., Inc.,*** 15 S.W.3d 83, 89 (Tenn. 2000). "If both the facts and conclusions to be drawn therefrom permit a reasonable person to reach only one conclusion, then summary judgment is appropriate." ***Seavers v. Methodist Med. Ctr. of Oak Ridge***, 9 S.W.3d 86, 91 (Tenn. 1999). Because this inquiry involves a question of law only, our standard of review is de novo with no presumption of correctness attaching to the trial court's conclusions. *See* ***Mooney v. Sneed***, 30 S.W.3d 304, 306 (Tenn. 2000); ***Carvell v. Bottoms***, 900 S.W.2d 23, 26 (Tenn. 1995).

This dispute centers on the proper interpretation of the August 19 letter and whether a contract was formed between the parties, given the facts that followed its execution, that mandates the return of the premiums paid by Edgar. We must determine whether the undisputed material facts demonstrate conclusively that one of the parties is entitled to summary judgment and, if so, to which party such judgment should be granted.

IV.

In order to prevail on his claim that he is entitled to a refund of the payment made pursuant to the August 19 letter, the plaintiff must demonstrate that the facts are such as to show an absolute obligation on the part of National to return the payment made by Edgar. In order to establish that it, rather than the plaintiff, was entitled to summary judgment, National must show that the only reasonable conclusion that can be reached from the facts and reasonable (to the plaintiff) inferences drawn from those facts is that there was no contract for the return of the payment made by Edgar under the terms of the August 19 letter. Thus, we must first determine the nature of the offer set forth in the August 19 letter.

At its core, National's argument is that the letter can only be interpreted "as an 'option' contract, or 'unilateral' contract, consisting of an 'offer' that is open to acceptance, or non-acceptance, by the performance of some voluntary act on the part of the offerees, instead of a verbal response," citing ***Ray v. Thomas***, 232 S.W.2d 32, 34-35 (Tenn. 1950). The plaintiff, on the other hand, takes the position that the letter represented two separate offers made by National to two separate parties that did not include any express requirement of acceptance by both parties. He contends that Edgar accepted the offer by payment of the specified premiums, thus creating a contract under which National was bound to return his payment if he was unsuccessful in the interpleader action.

"[T]he interpretation of a written agreement is a matter of law and not of fact." ***Rainey v. Stansell***, 836 S.W.2d 117, 118 (Tenn. Ct. App. 1992) (citations omitted); *see also* ***Eyring v. E. Tenn. Baptist Hosp***., 950 S.W.2d 354, 358 (Tenn. Ct. App. 1997). "The cardinal rule for interpretation of contracts is to ascertain the intention of the parties and to give effect to that intention consistent with legal principles." ***Rainey***, 836 S.W.2d at 118 (citation omitted). The court will look to the material contained within the four corners of the instrument to ascertain its meaning as an expression of the parties' intent. ***Simonton v. Huff***, 60 S.W.3d 820, 825 (Tenn. Ct. App. 2000). The words of the contract should be given their usual, natural and ordinary meaning. ***Id***. "All provisions of a contract should be construed as in harmony with each other, if such construction can be reasonably made, so as to avoid repugnancy between the several provisions of a single contract." ***Rainey***, 836 S.W.2d at 119 (citation omitted).

In order to ascertain the intention of the parties in a contract case, it is permissible to consider the circumstances of the parties at the time the contract was formed. ***Hamblen County v. Morristown***, 656 S.W.2d 331, 334 (Tenn. 1983) (citing "*Restatement of Contracts* § 235(d) and Comment"). *See also,* ***Wilkerson v. Williams***, 667 S.W.2d 72, 76 (Tenn. Ct. App. 1983) (providing that "[a]lthough a contract cannot be varied by oral evidence, the course of previous dealings, the circumstances in which the contract was made, and the situation of the parties are matters properly to be looked to by the court in arriving at the intention of the parties to the contract") (citing ***Kroger Co. v. Chemical Securities Co.***, 526 S.W.2d 468, 471 (Tenn. 1975); ***Jeffers v. Hawn***, 186 Tenn. 530, 212 S.W.2d 368, 370 (1948)).

When the August 19 letter was written, all affected parties were aware of the Florida litigation. They were aware of the fact that the issue in that litigation was the identity of the owner of the subject policies. When the August 19 letter was received, the hospital and Edgar both became aware that the policies, about which they were litigating, had lapsed because of non-payment of premiums. The recipients of the letter were also then aware that National was willing to re-instate the policies but wanted to have the past-due premiums in hand before it did so.

The first part of the August 19 letter is clear: "We will reinstate the policies but first we must be paid." In the second part of the letter, National made a "suggest[ion]" – if Edgar and the hospital could not agree as to who should make the payment, *both* should pay with the understanding that National would return to the unsuccessful party in the Florida litigation, *i.e.*, the one who was found not to be the owner of the policies, the premiums paid by that unsuccessful party. All of this is clear.

Applying these principles to the instant case, we conclude that the August 19 letter is properly construed as containing an offer by National to *both* Edgar and the hospital that if each will pay the premiums past due, it will reinstate the lapsed life insurance policies and, after the Florida litigation is concluded, refund to the losing party the payment of premiums made by him or it. "In forming a unilateral contract only one party makes a promise: the offeror makes the promise contained in the offer, and the offeree renders some performance as acceptance." 1 E. Allan Farnsworth, *Farnsworth on Contracts* § 3.4, at 205 (3d ed. 2004). It is the performance of *all* required acts that converts an offer into a contract. ***Allen v. Elliott Reynolds Motor Co.,*** 33 Tenn. App. 179, 230 S.W.2d 418 (Tenn. Ct. App. 1950).

By its express terms, National's offer provided for reinstatement of the policies upon full payment *by both the hospital and Edgar* of the specified premiums within 30 days. The record shows that Edgar made the necessary payment on September 18, 1994, two days before the offer expired. The policies were then reinstated. National offered to refund to the ultimate loser of the interpleader action the payment made by that party if "*both parties pay them*." (Emphasis added.) Stated differently, a plain reading of the "refund" offer shows that National promised, in view of the ownership dispute over the policies, that if both parties paid, then it would refund the non-owner the payment he or it had made. When the language of a contract is plain and unambiguous, it is the court's duty to interpret it and enforce it as written. ***Koella v. McHargue***, 976 S.W.2d 658 (Tenn. Ct. App. 1998). Because the part of National's offer pertaining to the refund of one party's payment was expressly conditioned on *both* parties making the required payments and, as the record now stands, only one party did so, we conclude that, under the facts now before us, the "refund" provision of the offer was not shown to have been triggered and, hence, National was not obligated to refund Edgar's payment. With respect to a unilateral or option contract, it is a well-established and uniform rule that the acceptance of an offer must exactly and precisely accord with the terms of the offer. *See* ***Allen v. National Advertising Co.***, 798 S.W.2d 766, 768 (Tenn. Ct. App. 1990) (citing ***Ray v. Thomas***, 232 S.W.2d at 34-35).

In reaching our decision, we reject the plaintiff's argument that it would be "wholly illogical" to interpret the August 19 letter as requiring premium payments by both offerees as a predicate to the formation of an enforceable contract for the refund of the premium payment because, the plaintiff reasons, the parties were on opposite sides of ongoing litigation to determine the ownership of the policies and there was little chance that they both would have agreed to this course of action. The fact that they were in a contest as to ownership is the very reason the offer was framed as it was. National's interest, as manifested by its refund offer, was to receive payment on the lapsed policies and to avoid any potential claim of prejudice, no matter what the result of the parties' ongoing ownership dispute. Edgar's interest, as manifested by his payment in response to the offer, was to reinstate the policies so that his claimed ownership interest in the policies in Florida would not be rendered moot. And while Edgar's affidavit is to the effect that he made the payment with the understanding that it would be returned if he lost ownership of the policies, we note that the record contains no allegation or evidence that the hospital ever made its required payment or that Edgar even attempted to ascertain whether the hospital had also paid before he tendered his payment on September 18. The plaintiff is not entitled to summary judgment because there is missing from the record a fact essential to the success of his suit, *i.e.*, payment by the hospital of the premiums due.

V.

In its letter of August 19, 1994, National made a proposal to the competing parties – Edgar and the hospital – that was designed to achieve several results: (1) reinstatement of the contested life insurance policies – a result that would make the contest in Florida meaningful; (2) payment to National of the past due premiums *regardless of who won in Florida*; and (3) *if each of the parties made a payment*, a mechanism by which the unsuccessful party would be due a refund of his or its payment. Edgar made his payment and, by virtue of that payment, ensured that there was something worth fighting for in Florida. Hence, he got a benefit from his payment. If he did not want to get that benefit, *unless the hospital also made its payment* as required by the terms of the offer, he should have taken upon himself the responsibility of determining before making his payment, that the hospital had also paid or was going to pay. As previously noted, the record does not indicate that he did so. Even though he was unsuccessful in Florida, he got a benefit from his payment to National – the reinstatement of the policies – and National got the payment of the past due premiums. National did not contract to refund Edgar his payment unless both parties paid. Again, the record is silent as to whether the hospital also made the requested payment. Without that showing, plaintiff is not entitled to summary judgment.

In summary, we conclude that reasonable minds could only conclude from the facts and inferences drawn therefrom that no contract existed, under the facts of this case, requiring a refund of the premiums paid. We therefore reverse the trial court's grant of summary judgment to the plaintiff.

VI.

On the record before us, National is also not entitled to summary judgment. As a moving party, it had to demonstrate that *only* Edgar made the required payment. This it failed to do. We remand for further proceedings as neither party is entitled to summary judgment based upon the record now before us.

VII.

The judgment awarding summary judgment to the plaintiff is vacated. The court did not err in failing to award National summary judgment. Costs on appeal are divided equally between the appellant Alan P. Woodruff and the appellee National Life Insurance Company. This case is remanded for further proceedings.

CHARLES D. SUSANO, JR., JUDGE